

## AUTHORITY TO CONTRACT FOR SERVICES

### PURPOSE

To set forth the City's policy establishing authority for committing City funds for Service Contracts.

### LIMITATION

Contracts for services are distinct from contracts for procurement of specific material items. If the only purpose of a contract is for the City to obtain goods, material or equipment, guidelines contained in the City's Purchasing Procedures will be followed. Contracts entered for the purpose of obtaining related service, installation, repair or maintenance of goods, materials and equipment shall also be formed under the guidelines contained in the City's Purchasing Procedures. The terms and conditions of contracts for service, installation, repair or maintenance of goods shall be included on the City's Purchase Order form, and additional contractual and procedural provisions may be necessary under the Purchasing Procedures for equipment maintenance, computer software and hardware purchases which exceed \$10,000, and other purchase-related services which exceed \$30,000.

Under the terms of City Charter Section 1110, contracts for public works that exceed \$30,000 in total expenditures must be awarded by the City Council. At its option, the City Council may direct the contract to be signed by the Mayor, the City Manager or the responsible Department Director.

### APPLICATION

The policy contained herein applies to all other contracts for services, whether acquired under a standard or emergency basis, including but not limited to professional services, audit services, public works project services, public property maintenance and repair services, and maintenance, custodial and repair services for all City facilities.

### POLICY

#### A. Authority to Enter Contracts

The Charter of the City of Newport Beach permits the City Council to delegate authority to sign contracts to the City Manager, and such other officer or officers as the Council may designate, and to impose monetary limits on such signing

authority. By resolution, the Council has delegated authority to sign service contracts to certain City officers, with specific monetary limits.

Regardless of whether an elected or nonelected City officer signs the service contract, the contract and any subsequent contract amendments shall also be signed by the City Clerk, shall be in a form approved by the City Attorney, and the City Attorney shall review and approve all contract and contract amendment documents prior to contract execution.

1. The City Manager. The City Manager is authorized to sign and award contracts for services without prior Council approval, provided the contract amount does not exceed \$50,000 and funds are available. This authority shall not be delegated below the Assistant City Manager level. The City Clerk shall sign all such contracts, and the City Attorney shall review and approve all contract documents prior to contract execution and award.
  - a. Some services are paid for by permit applicants, but the contracts for those services are entered by the City on behalf of the applicants. Funds to pay for these services are provided by the applicant and held by the City in an applicant deposit account. The City Manager is authorized to sign all service contracts which are paid for with funds from the applicant's deposit account, regardless of the amount of the contract.
  - b. When services are paid for by funds in an applicant deposit account and the total cost of services shall exceed \$100,000, the City Manager shall provide notice of the permit application and a brief description of the proposed project to the City Council.
2. Department Directors. Department Directors are authorized to sign written contracts for services that do not exceed \$30,000 without further Council review, as long as the services were approved by the City Council as part of the annual Department budget. This authority may not be delegated below the Department Director level. The City Clerk shall sign all such contracts, and the City Attorney shall review and approve all contract documents prior to contract execution and award.

3. City Attorney. The City Attorney is authorized to sign contracts for all services for outside counsel and experts related directly to and necessary for prosecution and defense of pending litigation as defined in the Brown Act, and for services for outside counsel and experts necessary to address other pending or potential legal claims or legal issues so long as funds for outside counsel, experts and related legal services were approved by the City Council as part of the annual budget process.

B. Authority to Amend Contracts

If circumstances arise that were not reasonably foreseeable by the parties at the time of contracting, and which make extra work necessary for the proper completion of the service, a contract amendment and corresponding increase in total contract amount may be necessary. For purposes of this policy, "total contract amount" shall be defined as the total consideration paid over the term of the agreement, including any previous amendments to the contract.

1. If the original contract did not exceed \$30,000 and was signed by a Department Director, the Department Director overseeing the contract may sign the contract amendment if that amendment will not cause the total contract amount to exceed 125 % of the original contract amount.
2. The City Manager may sign and award the contract amendment if the total cost of services will not exceed 125% of the original contract amount, or if the total contract amount does not exceed \$50,000, whichever is greater.
3. In certain situations, the City Manager and the Department Director in charge of the contract may determine that an amendment is needed that will cause the total contract amount to exceed the City Manager's amendment signing authority, and that the timing is such that a work stoppage or other undesirable consequence will result if approval of the change is delayed until the next City Council meeting. In those situations, the City Manager may approve an amendment that increases the total contract amount up to 150% of the original contract. However, the City Manager will notify all City Council Members individually if this situation develops, and if any individual Council Member objects to the increase, a special meeting of the City Council will be called to address the issue.

4. In the event of emergency work that requires an amendment to an existing contract, the emergency contracting policy outlined below shall be followed.

C. Procedures

1. Bidding. It is recognized that by their nature, service contracts cannot always be awarded as a result of a competitive bid process. However, competitive bids should be obtained whenever possible before resorting to negotiated awards.
2. Approvals.
  - a. All contracts for services, including exhibits and amendments, shall be reviewed and approved as to form by the City Attorney's Office prior to contract execution. The City Clerk shall sign and attest to all service contracts.
  - b. City Purchase Orders are not required for service contracts. A copy of the contract shall be submitted directly to Accounts Payable, where the Fiscal Services Manager will use it as an encumbering document. Thereafter, progress payments will be handled in the same manner as progress payments on a Purchase Order, i.e. invoices will be approved by the director of the department administering the contract and submitted to Accounts Payable for payment.
  - c. Insurance - All contracts shall be accompanied by proof of the appropriate level of insurance at the time of execution. The insurance level required shall be in accordance with the City's published Schedule of Insurance (attached and herein incorporated by reference as part of this Policy), or as otherwise approved by the City's Risk Manager.
3. Retention.
  - a. The City Clerk shall retain the original executed service contract approved by the City Council and signed by the Mayor (or such other officer as the Council may designate, in instances in which the Council approves a contract and directs a City officer to sign.)

At least one copy with original signatures shall also be kept by the Department responsible for administering the contract as required by the City Document Retention Policy.

- b. The City Manager's Office shall retain an original executed copy of any service contract signed by the City Manager or Assistant City Manager(s), in accordance with the City Manager's Office document retention policy.
- c. Each department shall retain an original executed copy of any service contract signed by its Department Director, in accordance with that department's document retention policy.

**D. Professional Services Consultant Selection**

Professional consultant services differ from other services in that they are of a professional nature, and due to the ethical codes of some of the professions involved, as well as the nature of the services provided, do not readily fall within the competitive bidding process. Professional consultants should be individually selected for a specific project or service with the objective of selecting the most qualified consultant at a fair and reasonable cost.

Professional services shall be obtained by a qualifications-based selection process. The following procedures shall be used in the selection of professional consulting services. This policy shall include, but not be limited to, services in the following fields:

Engineering (civil, mechanical, electrical, structural, traffic, geotechnical, etc.)

Architecture

Landscape Architecture

Construction Project Management Firms

Environmental

Planning

Economic Analysis

Property Appraisals

Land Surveying

Financial Services

Data Processing Services

Legal Services not otherwise authorized in Section A(3) of this Policy

1. Professional Services Consultant Selection Procedures

- a. Major Projects – Anticipated fee of over \$100,000 or other criteria related to complexity as determined by Department Director.
  - i. Lead Department(s) shall prepare a Request for Qualifications (RFQ) and solicit responses using current lists and industry resources. Lists of qualified consultants and RFQs shall be processed as needed, but not less than once every five (5) years.
  - ii. A Review Board, selected by the appropriate Department Director and composed of appropriate Staff representatives and/or qualified outside representatives, shall select three (3) to five (5) qualified firms to submit proposals.
  - iii. When a minimum of three (3) potential firms are unavailable, or if it is in the best interest of the City to limit the number of firms solicited, the basis for such action should be included in the report to the City Council.
  - iv. The Review Board shall review the proposals received and select the most qualified firms for interviews. The Review Board shall rank consultants based upon the following criteria:
    - Ability of the consultants to perform the specific tasks outlined in the RFP.
    - Qualifications of the specific individuals who will work on the project.
    - Amount and quality of time key personnel will be involved in their respective portions of the project.

- Reasonableness of the fee requested to do the work.
  - Demonstrated record of success by the consultant on work previously performed for a City, and for other municipalities or enterprises.
  - The specific method and techniques to be employed by the consultant on the project or problem.
- v. The Review Board shall select the most qualified firm and negotiate an appropriate not-to-exceed cost of services amount based upon the agreed scope of work (hours) and hourly rates. If negotiations are not successful, the Review Board will select a second qualified firm.
  - vi. The Review Board's recommended selection will be placed on the Council agenda. The recommendation should include the agreed not-to-exceed cost of services and a summary of the basis used to select the recommended consultant.
  - vii. A Professional Services Agreement reviewed and approved by the City Attorney will be attached to the Council staff report.
- b. Intermediate Projects – Anticipated fee between \$30,000 - \$100,000, or other criteria related to complexity as determined by Department Director.
    - i. Affected Department(s) should use procedures noted in Section D(1)(a) of this Policy, above, and invite proposals from a minimum of three (3) qualified consultants.
    - ii. The Department Director shall make a selection based upon the criteria set forth in Section D(1)(a) of this Policy and place the recommendation on the Council agenda.
    - iii. A Professional Services Agreement reviewed and approved by the City Attorney will be attached to the Council staff report, unless the cost of services do not exceed \$50,000, and the agreement is signed by the City Manager.

- c. Minor Projects - Anticipated fee under \$30,000
  - i. The Department Director shall maintain current files on qualified consultants in appropriate categories. The Department shall contact at least three (3) qualified consultants and request them to submit a proposal.
  - ii. The Department Director shall make a selection based upon the criteria noted in Section D(1)(a) of this Policy and is authorized to execute a Professional Services Agreement reviewed and approved by the City Attorney.

E. Emergency Contracts for Services

If a contract for services is necessary under the provisions of Newport Beach Municipal Code Section 2.20.020, procedures in the City Emergency Procedures shall be followed.

If a contract for services is necessary under the authority of Newport Beach City Charter Section 1110, and the contract amount exceeds the signing authority of the relevant Department Director or City Manager as authorized in this Policy, then that contract shall be brought to the City Council at its next regularly scheduled meeting for review.

Whenever possible, the City shall enter Emergency On-Call Agreements with contractors or consultants who can be relied upon to assist the City in advance of any actual emergency. Emergency On-Call Agreements shall be submitted to Council for approval after being reviewed and approved by the City Attorney's Office. After the Emergency On-Call Agreement is approved, services provided on an emergency basis under an Emergency On-Call Agreement may be retained by oral commitment of the City Manager (or, in the case of an emergency described by Municipal Code Section 2.20.020, the Director or Assistant Director of Emergency Services), to be memorialized in a Letter Agreement between the parties as soon as possible.

When a written contract has been entered to address an emergency, a copy of the written contract shall be provided to the City Clerk as soon as possible.

#### **FUTURE AMENDMENTS TO POLICY**

Any future changes in the provisions of this Policy shall be made by resolution of the City Council.

**Adopted - January 24, 1994**

**Amended - April 13, 2004**

**Amended by Resolution No. 2006-35 - May 9, 2006**